

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1242

Introduced by Senator Lara

February 18, 2016

An act to ~~add Section 1210.6 to~~ *amend Section 18.5 of* the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as amended, Lara. Sentencing: ~~modification: immigration consequences: misdemeanors.~~

Existing law provides that every offense punishable by imprisonment in a county jail up to or not exceeding one year is punishable by imprisonment in the county jail for a period not to exceed 364 days.

This bill would provide that a person who was convicted of an offense punishable by imprisonment in a county jail for up to or not exceeding one year prior to the enactment of that provision, and who was sentenced to county jail for one year, is deemed, for all purposes, to have been sentenced to county jail for 364 days.

~~Existing law authorizes, in certain circumstances, the court, within 120 days of the defendant's commitment to the custody of the Secretary of the Department of Corrections and Rehabilitation or the county correctional administrator on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings or the county correctional administrator, as applicable, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.~~

~~This bill would, grant the court jurisdiction to reduce a county jail term that is part of an otherwise final judgment if the defendant~~

~~establishes by a preponderance of the evidence that certain conditions are satisfied, including, among others, that the defendant is not a United States citizen and may be subject to adverse immigration consequences because of a plea of guilty or nolo contendere to, or conviction for, the offense for which the county jail term was served and reducing the county jail term would ameliorate those consequences, and that, if the county jail was a material term of a plea agreement, the prosecution consents to the reduction. The bill would authorize the court to reduce the county jail term to any lower term allowed by law for the offense. The bill would provide that a grant or denial of relief under these provisions is not appealable, but may be challenged by a petition for a writ of mandate or prohibition filed within 60 days of the grant or denial. By imposing new duties on local prosecutors, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~.
State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 18.5 of the Penal Code is amended to*
2 *read:*

3 18.5. Every offense which is prescribed by any law of the state
4 to be punishable by imprisonment in a county jail up to or not
5 exceeding one year shall be punishable by imprisonment in a
6 county jail for a period not to exceed 364 days. *A person who was*
7 *convicted of an offense punishable by imprisonment in a county*
8 *jail for up to or not exceeding one year prior to the effective date*
9 *of Chapter 174 of the Statutes of 2014 and who was sentenced to*
10 *county jail for one year is deemed, for all purposes, to have been*
11 *sentenced to county jail for 364 days.*

12 ~~SECTION 1. Section 1210.6 is added to the Penal Code,~~
13 ~~immediately following Section 1210.5, to read:~~

1 ~~1210.6.— (a) The court shall at any time have jurisdiction to~~
2 ~~reduce a county jail term that is part of an otherwise final judgment~~
3 ~~if the defendant establishes by a preponderance of the evidence~~
4 ~~that all of the following conditions are satisfied:~~

5 ~~(1) The county jail term was served as a result of a plea of guilty~~
6 ~~or nolo contendere to, or conviction for, a misdemeanor offense~~
7 ~~or as a condition of probation imposed as a result of a plea of guilty~~
8 ~~or nolo contendere to, or a conviction for, a felony offense in which~~
9 ~~the court never imposed sentence.~~

10 ~~(2) The defendant is not a United States citizen and may be~~
11 ~~subject to adverse immigration consequences because of the plea~~
12 ~~of guilty or nolo contendere to, or conviction for, the offense for~~
13 ~~which the county jail term was served and reducing the county jail~~
14 ~~term would ameliorate those adverse immigration consequences.~~

15 ~~(3) In the discretion of the court, reducing the county jail term~~
16 ~~would be in furtherance of justice.~~

17 ~~(4) If the county jail term was a material term of a plea~~
18 ~~agreement, the prosecution consents to a reduction pursuant to this~~
19 ~~section.~~

20 ~~(b) The defendant shall bring a motion to reduce a county jail~~
21 ~~term in the same court in which the defendant entered his or her~~
22 ~~plea of guilty or nolo contendere or in which he or she was~~
23 ~~convicted. The court may reduce the county jail term to any lower~~
24 ~~term allowed by law for the offense. However, the court shall not~~
25 ~~modify any other terms of the conviction.~~

26 ~~(c) If the defendant has previously been granted relief under~~
27 ~~this section, the court may deny a subsequent request without~~
28 ~~considering the merits. Notwithstanding any other provision of~~
29 ~~law, the grant or denial of relief under this section shall not be~~
30 ~~appealable, but may be challenged by a petition for a writ of~~
31 ~~mandate or prohibition filed within 60 days of the grant or denial.~~

32 ~~SEC. 2.— The Legislature finds that there is no mandate~~
33 ~~contained in this act that will result in costs incurred by a local~~
34 ~~agency or school district for a new program or higher level of~~
35 ~~service which require reimbursement pursuant to Section 6 of~~
36 ~~Article XIII B of the California Constitution and Part 7~~
37 ~~(commencing with Section 17500) of Division 4 of Title 2 of the~~
38 ~~Government Code.~~